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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re: Chapter 11  
GENERAL MOTORS CORP, et al., Case No.: 09-50026  
Debtors. (*Jointly Administered*)

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**NOTICE OF FILING**

To: See Attached Certificate of Service

PLEASE TAKE NOTICE that on June 15, 2009, we caused to be filed with the Clerk of the United States Bankruptcy Court for the Southern District of New York at the Dirksen Federal Building, One Bowling Green, New York, New York, 10004-1408, the **Objection of Trico Products Corporation to Notice of (I) Debtors' Intent To Assume and Assign Certain Executory Contracts, Unexpired Leases of Personal Property, and Unexpired Leases of Nonresidential Real Property and (II) Cure Costs Related Thereto**, a copy of which is attached hereto and hereby served upon you.

Dated: June 15, 2009

**TRICO PRODUCTS CORPORATION**

By: /s/ Thomas R. Fawkes  
One of Its Attorneys

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on Monday, June 15, 2009, I served this *Objection of Trico Products Corporation to Notice of (I) Debtors' Intent To Assume and Assign Certain Executory Contracts, Unexpired Leases of Personal Property, and Unexpired Leases of Nonresidential Real Property and (II) Cure Costs Related Thereto* to those parties receiving electronic notice in the above-captioned case through the Court's ECF/CM system and upon the individuals listed on the following Service List by first-class United States mail, postage prepaid.

/s/ Thomas R. Fawkes

**Service List**

**Electronic Mail Notice List**

The following is the list of parties who are currently on the list to receive e-mail notice/service for this case.

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*Attorneys for Trico Products Corporation*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re: Chapter 11

GENERAL MOTORS CORP, et al., Case No.: 09-50026  
Debtors. (*Jointly Administered*)

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**OBJECTION OF TRICO PRODUCTS CORPORATION TO NOTICE OF  
(I) DEBTORS' INTENT TO ASSUME AND ASSIGN CERTAIN EXECUTORY  
CONTRACTS, UNEXPIRED LEASES OF PERSONAL PROPERTY, AND  
UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY  
AND (II) CURE COSTS RELATED THERETO**

Trico Products Corporation (“*Trico*”), creditor and party-in-interest in the above-captioned bankruptcy cases of General Motors Corp. and its affiliated debtors (collectively, the “*Debtors*”), by and through its undersigned counsel, hereby submits its objection (the “*Objection*”) to the cure amount and statement of cure claim set forth in the *Notice of (I) Debtors' Intent To Assume and Assign Certain Executory Contracts, Unexpired Leases of Personal Property, and Unexpired Leases of Nonresidential Real Property and (II) Cure Costs Related Thereto* (the “*Cure Notice*”). In support of its Objection, Trico states as follows:

## **BACKGROUND**

### **A. Trico's Relationship With the Debtors**

1. Trico is a manufacturer of wiper blades and wiper systems, supplying its products to both OEM and aftermarket customers. In the period leading up to the Debtors' chapter 11 filings, Trico supplied wiper blades and wiper systems to the Debtors for installation in several models of new GM vehicles – and indeed, is the sole supplier of wiper blades and systems with respect to those models.

2. Trico supplies products to the Debtors pursuant to numerous purchase orders (collectively, the "*Purchase Orders*"),<sup>1</sup> as well as terms and conditions which apply to each of the Purchase Orders.

### **B. The Cure Notice**

3. On June 5, 2009, the Debtors served the Cure Notice pursuant to the *Order Pursuant to 11 U.S.C. §§ 105, 363, and 365 and Fed. R. Bankr. P. 2002, 6004, and 6006* (*I*) *Approving Procedures for Sale of Debtors' Assets Pursuant to Master Sale and Purchase Agreement with Vehicle Acquisition Holdings LLC, a U.S. Treasury-Sponsored Purchaser*; (*II*) *Scheduling Bid Deadline and Sale Hearing Date*; (*III*) *Establishing Assumption and Assignment Procedures*; and (*IV*) *Fixing Notice Procedures and Approving Form of Notice* (Docket No. 274), approving, among other things, procedures establishing a process for the: (a) assumption of certain supplier agreements by the Debtors (as defined in the Cure Notice, the "*Assumable Executory Contracts*") and assignment of these agreements to the proposed purchaser of substantially all of the Debtors' assets, Vehicle Acquisition Holding LLC, a

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<sup>1</sup> Because the Purchase Orders are voluminous, they have not been attached to this Objection. However, Trico will provide the Debtors or any other party-in-interest with copies of the Purchase Orders promptly upon request.

purchaser sponsored by the U.S. Treasury (the “*Purchaser*”); (b) determination of the amounts necessary to cure defaults under the Assumable Executory Contracts (as defined in the Cure Notice, the “*Cure Amounts*”); and (c) resolution of other disputes in connection with the assumption and assignment of the Assumable Executory Contracts.

4. The Cure Notice directed Trico to a website maintained by the Debtors (the “*Contract Website*”) identifying certain production supplier agreements that the Debtors have identified as Assumable Executory Contracts that they intend to assume and assign to the Purchaser, as well as the proposed “Cure Amount” associated with each Assumable Executory Contract.

5. On the Contract Website, the Debtors have scheduled their production supplier agreements with Trico among those intended to be assumed and assigned to the Purchaser, and have determined that the “Cure Amount” needed to cure all pre-Petition Date defaults thereunder is \$356,832.29.

#### **OBJECTIONS TO CURE NOTICE**

6. Section 365(b)(1)(A) of the Bankruptcy Code requires that “[i]f there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee cures, or provides adequate assurance that the trustee will promptly cure, such default.” 11 U.S.C. § 365(b)(1)(A).

7. Trico understands that the Debtors are continuously updating the Cure Amounts posted on the Contract Website. In fact, the Cure Amounts listed on the Contract Website are even changing today, the deadline for Trico to file its Objection. Because the Cure Amounts on the Contract Website remain in a state of flux, Trico has thus far been unable to fully reconcile

the Debtors' Cure Amounts to its own records. Trico therefore reserves its rights to supplement this objection once it is fully able to reconcile the Debtors' Cure Amounts to its own records. Additionally, Trico reserves all rights to file additional objections or other pleadings as necessary in response to future revisions to the Contract Website as it pertains to the Purchase Orders or the Cure Amounts.

8. Notwithstanding the protective objection set forth above, based on the Cure Amounts set forth on the Contract Website as it stands today, Trico has been able to identify several discrepancies and submits that as of the date the Debtors' commenced their chapter 11 cases (the "*Petition Date*"), the Debtors are indebted to Trico on account of pre-Petition Date obligations under the Purchase Orders in an amount not less than \$502,211.51 (the "*Actual Cure*"). Pending resolution of the below disputes, the Debtors should not be authorized to assume or assign any of the Purchase Orders to the Purchaser (or any other purchaser determined to be the prevailing bidder for the Debtors' assets at auction).

- Trico shipped approximately \$63,366.86 worth of product to the Debtors in the week prior to the Petition Date (the "*Prior Shipments*").<sup>2</sup> Based on Trico's attempted reconciliation of the Cure Amount with its books and records, it appears that the invoices evidencing the Prior Shipments were not included in the Debtors' calculation of the Cure Amount. Accordingly, Trico seeks confirmation from the Debtors: (1) that the Prior Shipments are not included in the Cure Amount; and (2) that the invoices evidencing the Prior Shipments constitute post-Petition Date obligations of the Debtors' estates that will be satisfied in full either

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<sup>2</sup> Trico has not attached the invoices forming the basis for the Actual Cure, as (1) they are voluminous; and (2) they should be in the possession of the Debtors. However, upon the reasonable request of a party-in-interest, Trico will provide copies of the invoices.

(a) in the ordinary course of business (and will be accorded administrative expense priority); or (b) are eligible to be paid to Trico as its designation as an Essential Vendor (as defined in the *Interim Order Pursuant to 11 U.S.C. §§ 105, 363, and 364 Authorizing Debtors To (I) Pay Prepetition Claims of Certain Essential Suppliers, Vendors, and Service Providers, (II) Continue Troubled Supplier Assistance Program, and (III) Continue Participation in the United States Treasury Auto Supplier Support Program*). Until the Debtors provide such confirmation, Trico has included the Prior Shipments in the calculation of the Actual Cure.

- The Contract Website listed most, but not all of the Purchase Orders. Trico believes that the Debtors inadvertently excluded Purchase Orders 000119450, SC03303569 and 000122785 (the “*Excluded Contracts*”). Trico requests confirmation from the Debtors that the Debtors intend to assume and assign the Excluded Contracts to the Purchaser and that they are Assumable Executory Contracts. To the extent that the Debtors do not intend to assume and assign the Excluded Contracts, Trico objects to such designation and the Court should deem the Excluded Contracts to be Assumable Executory Contracts.
- The Contract Website listed two Purchase Orders that are not active and that have been replaced by new Purchase Orders prior to the Petition Date. Therefore, Purchase Orders 07DD004X and 07DD004Z should be replaced by Purchase Orders OMP5001P and OMP5001V, respectively.
- Trico asserts Pre-Petition Date pricing disputes with the Debtors in the aggregate amount of \$51,590.87 (the “*Disputed Charges*”) with respect to the following:

- \$6,154.78 with respect to unapproved chargebacks.
- \$2,060.43 with respect to freight disputes.
- \$8,019.16 with respect to the Debtors' failure to pay the correct prices as listed in Trico's invoices.
- \$35,356.50 with respect to a pricing issue with respect to the Debtors' Saturn Division with Service – Part Number B91625-440. The Purchase Order between the parties provides that the price per unit is \$48.58. However, prior to the Petition Date, an apparent accounting error made by the Debtors led to the Debtors paying Trico only \$8.755 per unit – a difference of almost \$40.00 per unit from the agreed-upon price. The Debtors purchased 900 units of this part based on this incorrect pricing. Therefore, a default in the amount of \$35,356.50 exists which must be cured in order for this Purchase Order to be assumed.
- \$6,800.00 with respect to a pre-Petition Date invoice issued with respect to tooling provided to the Debtors (the "*Tooling Charges*").
- Unpaid pre-Petition Date invoices for product shipped to the Debtors pursuant to the Purchase Orders, in an amount not less than \$23,621.49.<sup>3</sup>

9. As to each of the above disputed amounts, Trico will provide further details, as well as copies of relevant documents, to the Debtors upon request.

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<sup>3</sup> Additionally, Trico and the Debtors are parties to several agreements and purchase orders concerning the Hummer H2 platform. In previous correspondence, Trico has requested that, among other things, the Debtors make a lump sum payment to Trico for obsolescence recovery in the amount of \$175,699 under the Hummer H2 Purchase Orders. The parties are engaged in discussions regarding outstanding Hummer H2 issues. While at this time, Trico does not believe that the requested obsolescence recovery payment constitutes a pre-petition default of the Debtors, Trico reserves all rights to assert an objection to the assumption of the Hummer H2 Purchase Orders if such payment is later determined to be a pre-petition default.

10. Until the Cure Amount is revised to match the Actual Cure, or until the parties reach agreement as to the Debtors' cure obligations to Trico, Trico objects to the assumption and assignment to the Purchaser (or any other purchaser of the Debtors' assets) of any of the Purchase Orders.

**CONCLUSION**

For the foregoing reasons, Trico objects to the Cure Notice, and requests: (1) allowance of the Cure Amount needed to cure all pre-Petition Date defaults under the Purchase Orders in the aggregate amount of \$502,211.51; (2) clarification or confirmation concerning the issues set forth in this Objection; and (3) such other and further relief that may be just and proper.

Dated: June 15, 2009

**TRICO PRODUCTS CORPORATION**

By: /s/ Thomas R. Fawkes  
One of Its Attorneys

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